

Members

Rep. William Crawford, Chair
Rep. Charlie Brown
Rep. Mary Kay Budak
Rep. Susan Crosby
Rep. Gary Dillon
Rep. Dave Frizzell
Sen. Patricia Miller, Vice-Chair
Sen. Rose Antich
Sen. Robert Meeks
Sen. Marvin Riegsecker
Sen. Vi Simpson
Sen. Samuel Smith, Jr.



INTERIM STUDY COMMITTEE ON MEDICAID OVERSIGHT

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 232-9588 Fax: (317) 232-2554

LSA Staff:

Al Gossard, Fiscal Analyst for the Committee
Barry Brumer, Attorney for the Committee
Carrie S. Cloud, Attorney for the Committee

Authority: Legislative Council Resolution 00-1
(Adopted May 25, 2000)

MEETING MINUTES¹

Meeting Date: September 13, 2000
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington
St., Senate Chambers
Meeting City: Indianapolis, Indiana
Meeting Number: 3

Members Present: Rep. William Crawford, Chair; Rep. Charlie Brown; Rep. Susan Crosby; Rep. Mary Kay Budak; Rep. Gary Dillon; Rep. Dave Frizzell; Sen. Patricia Miller, Vice-Chairperson; Sen. Vi Simpson; Sen. Rose Antich; Sen. Samuel Smith, Jr..

Members Absent: Sen. Robert Meeks; Sen. Marvin Riegsecker.

Rep. Crawford, Chair, called the third meeting of the Interim Study Committee on Medicaid Oversight to order at 1:40 p.m. He announced that the agenda item regarding "Medicaid Managed Care Access to Drugs" would be taken out of order.

Medicaid Managed Care Access to Drugs

Sen. Rose Antich stated that there was some concern about a recent action taken by the Drug Utilization Review (DUR) Board and how that action affects the consistency of the drug formularies maintained by the managed care organizations providing services in the Medicaid program. A document (Exhibit 1)¹ was provided to the Committee outlining several managed care drug issues, including the following: (1) the inconsistency of the formularies; (2) compliance with a statute passed by the 1999 General Assembly; and (3) the process of changing formularies. Sen. Antich requested the following information from the Office of Medicaid Policy and Planning (OMPP): (1) copies of the drug formularies used by Managed Health Services (MHS), the Central Indiana Managed Care Organization (CIMCO), and Maxihealth; and (2) a list of the drugs requiring prior authorization by these

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

three managed care organizations.

Rep. Crawford stated that he would like the information provided prior to the next meeting of the Committee and that the issue would be on the agenda for further discussion and resolution at the next meeting.

Long Term Care Task Force

Ms. Judith Becherer, director of Long Term Care Services, OMPP, briefed the Committee on the process and time-in used by OMPP in the development of a new Medicaid waiver and an amendment to the existing Aged and Disabled waiver. The new waiver is to provide assisted living and adult foster care services. The amendment is to expand adult day care services provided through the Aged and Disabled waiver as required by HEA 1197 (2000). As part of the process, the governor appointed a Long Term Care Task Force, consisting of consumers and providers, to assist the administration in development of guidelines for the new waiver and the amendment.

Ms. Becherer provided a document (Exhibit 2)¹ summarizing the critical time-lines and activities of OMPP and the Task Force from April through December of 2000. The Family and Social Services Administration (FSSA) is to submit the waiver and amendment to the Health Care Financing Administration (HCFA) by October 1, 2000. Included in this exhibit are descriptions (e.g., members, purpose, functions, and guidelines) of each of the four workgroups established within the Task Force. Ms. Becherer stated that there have been 14 separate meetings and that state staff does not have a vote on the Task Force or workgroups.

Ms. Becherer also provided copies of a progress report (Exhibit 3)¹ presented to the governor on September 8, 2000, summarizing the assisted living, adult foster care, and adult day care waiver program policy recommendations and the proposed waiver program budget.

Mr. John Cardwell, Citizen's Action Coalition and a member of the Task Force, also reported to the Committee on the actions taken by the O'Bannon administration to implement HEA 1197 (2000) (See Exhibit 4)¹. Mr. Cardwell's report included information regarding the intent of HEA 1197, the workgroup process, and the models used for the waivers. He noted that, although there has been compliance with the statute, FSSA has established extremely modest client service targets for the waiver. However, Mr. Cardwell added that since the last meeting of the Task Force, he had met with Ms. Katie Humphreys, secretary of FSSA, and she had expressed a willingness to thoroughly review the targets. OMPP staff commented that a Medicaid waiver can be amended at any time.

Mr. Cardwell stated that there have been concerns expressed about the employment of Mr. Dick Ladd as a consultant by FSSA, primarily due to his association with the assisted living program in Oregon. Mr. Cardwell added that Mr. Ladd is the preeminent expert in the country on assisted living. He also stated that Mr. Ladd was not directly involved in the specific decisions on Task Force recommendations. However, the Task Force tended to gravitate toward the assisted living and adult foster care systems that had been established in Oregon and Washington.

Rep. Crawford announced that, since Mr. Ladd currently resides in Texas and the Committee's budget is only sufficient to hold two more meetings during this interim, there would be no request for Mr. Ladd to appear before the Committee.

Hemophilia Drug Issue

Ms. Kathy Gifford, assistant secretary for OMPP, briefed the Committee on the progress made since the previous meeting on the Hemophilia drug reimbursement issue. She reminded the Committee that the problem occurred after an investigation by the National Association of Medicaid Fraud Control Units and the U.S. Department of Justice into the pricing of pharmaceutical products determined that some drug manufacturers had misrepresented or overstated their average wholesale prices (AWP). Consequently, First DataBank, a company that collects and publishes pricing information, reported a lower AWP. Since the drug reimbursement methodology used by OMPP equals the AWP less 10% plus a \$4.00 dispensing fee, a significantly lower reimbursement rate was established for about 400 drugs, including hemophilia drug products. This new reimbursement rate was claimed to be less than the acquisition cost to providers.

Ms. Gifford stated that upon further investigation it has been determined that First DataBank maintains two sets of prices, one of which is the price previously used by OMPP to determine reimbursement levels. Consequently, at least until new pricing information is discovered, the administration has chosen to reimburse at the old level and can do so under the existing rules. This decision is retroactive to May 1, 2000, when the lower reimbursement rates were initially established.

Rep. Crawford reminded members that the Committee had authorized and sent a letter to the Legislative Council urging the Council to request that the governor initiate a moratorium on the lower reimbursement rates. Rep. Brown suggested that the Committee, in light of the developments, send another letter to the Council stating that the matter has been resolved and requesting that the matter be withdrawn from consideration. Rep. Crawford directed staff to compose such a letter.

Mr. Steve Basset, Hemophilia of Indiana, Inc., and Ms. Jill Moberly, a consumer of blood factor products, thanked the Committee for their attention to this matter.

Medicaid Reimbursement Rates

Ms. Jean MacDonald, director of public policy for the Indiana Association for Home and Hospice Care, Inc., introduced the two Medicaid reimbursement topics: (1) reimbursement for Medicaid waiver services; and (2) reimbursement for home health services in the regular Medicaid program.

Reimbursement for Medicaid Waiver Services

Ms. MacDonald distributed a list of 166 providers that had closed since January 1998 (Exhibit 5)¹ due in large part to low reimbursement rates. The 166 providers represent about 44% of all waiver service providers in Indiana. Ms. MacDonald also distributed a letter from the Visiting Nurse Service, Inc., a not-for-profit organization that provides home health services under the Medicaid waiver (Exhibit 6)¹.

Ms. Claudia Chavis, Caregiver, Inc., provided written testimony to the Committee (Exhibit 7)¹. Ms. Chavis stated that her agency provides the full range of home health care services to a very diverse population, the majority of whom were elderly or disabled. She added that her ten-year-old agency was both Medicaid and Medicare certified. She stated that her purpose for testifying was to stress the urgent need to raise the reimbursement rates for waiver services. She added that agencies operate on a very small margin while competing for staff in the labor market with a nationwide shortage of nurses. In order to attract and retain workers, they must be offered competitive rates. She urged that state policy makers address this issue.

Ms. Jackie Steuerwald, chief executive officer of Preferred Home Care, Inc., told of her firm's decision in November 1999 to withdraw as a provider of home health care services under the Medicaid waiver program (see Exhibit 8)¹. The decision to withdraw was based on Preferred Home Care's loss of \$250,000 in the provision of waiver services from January through September of 1999. She stated that the firm's withdraw affected 82 patients in 45 Indiana counties.

Responding to a question from Rep. Budak, Ms. Steuerwald stated that the federal Balanced Budget Act of 1997 has affected the supply of and environment faced by home health care nurses. There have also been regulatory changes that have increased the cost of providing home health care.

Responding to a question from Rep. Budak regarding the possibility of providing incentives to increase the supply of nurses, Ms. MacDonald stated that there is a governor's commission that is looking into this issue.

Ms. Linda Simers, a private provider for the Aged and Disabled waiver program from Osgood, IN, provided information to the Committee regarding costs faced by her and other providers in comparison to the reimbursement rate she receives (Exhibit 9)¹.

Reimbursement for Home Health Services in the Regular Medicaid Program

Ms. MacDonald introduced a second separate reimbursement issue on the agenda: reimbursement for home health services in the regular Medicaid program. Ms. MacDonald also introduced Ms. Stella Hahn and her daughter, Ms. Carol Lazarek, from Michigan City. Ms. Hahn is a ventilator patient and confined to a wheelchair. Ms. Lazarek described her mother's situation and suggested that the problem is that no separate Medicaid reimbursement category exists for nurses working with high tech/ventilator patients (see Exhibit 10)¹. Ms. Lazarek suggested that this results in the following: (1) very few home health agencies will take a ventilator patient; (2) if the company can take the patient, the company is unable to fully staff the case; and (3) when the home health agency cannot fill the approved hours, the patient's family must provide the care and the patient loses the allotted hours.

Ms. Lazarek suggested the following possible solutions: (1) increase the hourly rate for nurses working with high tech/ventilator patients; (2) allow prior authorization hours to be used by the patient and family as needed; and (3) in the instance when no nursing coverage is available, consider paying the patient's family.

Rep. Scott Pelath, as the State Representative for the Hahn family, stated that it is his hope that the General Assembly can find ways to help people like Ms. Hahn. He added that this needs to be a high priority issue in the next session.

Mr. Lazarek, son-in-law of Ms. Hahn, stated that he has worked hard to help his mother-in-law and that he appreciates the help the family has received from the state agencies. He added that this is not a business for the state agencies and it hurts them, as well, when they are not able to help. Thus, resolving this problem will help the agencies hire good outstanding people in their fields to provide home health care services.

Ms. MacDonald added that part of the problem may be in the way the overhead rate is added to the hourly rate. As a consequence, short jobs (e.g., one or two hours) are much more profitable for a home health provider than patients requiring extended hours (e.g., eight to 16 hours).

Ms. Linda Chavez, administrator of Interim Health Care, Inc., a licensed home health agency in northwest Indiana, indicated that her agency also has considerable difficulty hiring and retaining nurses who can work with high tech/ventilator patients. She stated that Medicaid presently has an aggregated rate based on a yearly cost report. Those rates, based on both an hourly rate and a fixed encounter rate, are not implemented until one year after the submission of the cost report. Ms. Chavez requested a separate reimbursement rate for high tech/ventilator and trachea cases. Ms. Chavez provided rate data in her written testimony (Exhibit 11)¹.

Public Testimony

Ms. Nancy Schweller (Rolling Prairie, IN) and Ms. Vicky Schweller (Union Mills, IN) told of the health problems faced by four-year-old Ryan Schweller. Ryan has a rare brain disorder known as bi-lateral diffuse polymicrogyria. Ms. Nancy Schweller spoke of their attempt to become eligible for the Medicaid program and to be placed on the Medicaid waiver program. She added that the waiting list for the waiver program consists of 1,500 people. Ms. Schweller urged the state to increase funding for waiver services in order to reduce the size of the waiting list. Ms. Schweller provided written testimony (Exhibit 12)¹. Ms. Schweller urged the Committee to not wait until it was too late: it would cost the state more if Ryan were placed in an institution.

Rep. Crawford requested that OMPP provide the Committee with additional information regarding the state's waiver programs, as well as information regarding the flexibility the state has in determining and changing reimbursement rates under the regular Medicaid program and the waiver program.

Rep. Crawford reminded the members that the next meeting will be Wednesday, October 11 at 10:30 a.m. in Room 233 of the State House. He added that the last meeting scheduled for Wednesday, October 25, at 10:30 a.m. in Room 233, will be primarily for Committee discussion and consideration of legislative recommendations.

Rep. Brown suggested that the Committee consider legislation to reestablish this Committee as a commission with permanent status. Staff was requested to provide a preliminary draft for consideration at a future meeting.

Documents provided to the Committee in advance of the meeting included the following: (1) "Indiana Home and Community-Based Services Medicaid Waiver Information Packet" produced by OMPP (Exhibit 13)¹; (2) a memo written by staff regarding the flexibility of Medicaid waivers (Exhibit 14)¹; and (3) a preliminary draft (PD 3241) reestablishing the Interim Study Committee on Medicaid Oversight as the Select Joint Committee on Medicaid Oversight with an expiration date of December 31, 2002 (Exhibit 15)¹.

There being no further business to consider, the meeting was adjourned at 3:10 p.m.